



Written by [Selwyn Duke](#) on November 22, 2011

Do States Have a Right to Do Wrong?

During the Thanksgiving Family Forum (TFF) this past Saturday, moderator Frank Luntz asked the Republican candidates a very interesting Tenth Amendment question: "Do states have a right to do wrong?"

In case you missed it, the TFF was another [unusual event](#) in what is proving to be a very unusual campaign season. Held in a church in Des Moines, Iowa, and with all the GOP contenders in attendance except for Mitt Romney and John Huntsman, it was not a debate as much as a discussion – and a rather intellectual one. The candidates were asked about their faith, trials and tribulations, and talked frankly about Jesus, family, and personal failure. And with social issues front and center, moderator Luntz posed the following question, initially addressing Herman Cain:



Abraham Lincoln once said that "The states do not have the right to do wrong." ...If the governors had the right to tell Washington "no" – you're [Cain is] from Georgia – that would have had serious consequences on your youth; I've read your background. Do governors in the states, on issues of morality, have the right to tell Washington "no"?

Obviously, what Luntz alluded to involved segregation in the South and the creation of the federal Civil Rights Act of 1964. And the candidates' answers varied from the assertion that states don't have a right to do wrong to Ron Paul's statement, which was, "The states definitely have a right to be wrong. The states are supposed to correct it. But there are limits. That's why we have a Constitution." But while Paul's response was the best, the complete answer remained unsaid. And in an age of unprecedented trampling of states' rights, this must not remain the case.

To understand this issue, we must consider the bias inherent in the question. While Luntz is a good man who I believe was motivated by only pure intentions, his question reflected a common mistake. He cited one instance in which the feds were right and the states wrong, but this ignores the multitude of times the reverse has been true. Why, I could just as easily ask:

Washington has steadfastly refused to enforce immigration law, thus allowing the invasion of our land; this is a gravely immoral failure to act. And when states such as Arizona have stepped up to the plate and tried to enforce the law themselves, the feds have treasonously sided with foreign nations in opposing these patriotic remedies. So do politicians in Washington, on issues of morality, have the right to tell the states "no"?

Since Lincoln has been cited, I'll use a variation on another of his famous quotations and say, if you look for the worst in a level of government, you're sure to find it. This goes for *any* level of government.



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You see, if God — the author of morality — ruled directly from Washington, states' rights wouldn't be an issue. Little g would then be big G, and the proclamations flowing from it would be inerrant. We then wouldn't even need states, in just the way we wouldn't need government at all if every individual were so godly that his behavior and judgment were inerrant. (Hamilton and Madison [wrote](#) in Federalist 51 in 1788: "If men were angels, no government would be necessary.") But the reality is that all our institutions and government bodies are filled with imperfect beings, which is why the Founding Fathers prescribed a *balance of power* through the Constitution. Only an all-knowing entity could be trusted to be an all-powerful one.

This brings us to a second common mistake. Whenever we're asked whether a person or entity has a given "right," we must respond, "Not enough data." Is the questioner asking about *legal* rights or *moral* rights? Morally, none of us has a right to do wrong. But legally is an entirely different matter precisely because government is not God, and not being all-seeing it mustn't be all-encompassing. Of course, it must try to discern what morality dictates when devising law if the law is to be just, but an entity that can't even manage a budget shouldn't be micromanaging lives.

And think about what government becomes when it attempts to. It's wrong to drink, smoke, or eat to excess, and a church has every business saying so and labeling such behavior sinful. After all, looking to God for guidance, religion deals with *all* aspects of morality. In light of this, however, what should we call a government that legislates *all* aspects of its conception of morality? You might say that the closer a government gets to this totalitarian state, the more it starts to resemble a church with muscle.

Except that this isn't quite the proper analogy.

After all, secular government doesn't look to God but to itself. Within a godless world view, it is the highest power, being the most powerful entity in the only world that exists, the material one. Thus, such a government takes on the posture of God, decreeing as it will — like a Roman emperor or Egyptian pharaoh, who also claimed god status — without the check and balance recognition of higher law can provide. And now some would question the check and balance of states' rights as well.

The reality is that no government entity can be an inerrant arbiter of moral problems. So what was the answer to a follow-up question Frank Luntz asked about who decides moral disputes between the states and feds? It is that, in our constitutional republic, we all do.

In accordance with our Constitution.

Is it messy? Sure. Democratic processes often are. We push back and forth, to and fro, stumbling and toddling along as man always has; we debate the issues of the day, as some struggle to impose their will while others struggle to discern the higher one. But if we really want matters simple and neat, we can appoint a monarch or Mussolini, and perhaps the trains will run on time. Or, if momentary majority caprice better suits you, we can allow Congress to impose whatever its immediate will may be. Then again, if an oligarchy takes your fancy, we can give the Supreme Court that power through unfettered judicial review. Hmm ... oops.

It's ironic that the very people who preach the separation of church and state most would turn the central government into a god. Quite frankly, a little messiness sounds a whole lot better.



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